Court of Appeal, Second Appellate District, Div. 3
Nos. B188076/B189254



**No. S152360**

# IN THE SUPREME COURT OF CALIFORNIA

---

ALEXANDRA VAN HORN, Plaintiff and Respondent,

v.

ANTHONY GLEN WATSON, Defendant and Appellant;

LISA TORTI, Defendant and Respondent.

And Consolidated Case.

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## OPENING BRIEF ON THE MERITS

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## I. ISSUE GRANTED FOR REVIEW

Section 1799.102[1] of the California Health & Safety Code[2] grants immunity to any person who "renders emergency care at the scene of an emergency." Should this Good Samaritan statute apply to an individual, who observes a serious car accident, rushes to the smoking vehicle and removes her severely-injured friend believing in good faith that the car is about to catch fire or explode?

## II. INTRODUCTION AND SUMMARY OF ARGUMENT

At common law, a person has no duty to help another in peril and, in fact, risks liability for providing such help. The California Legislature expressly rejected these common law principles in 1959 when it enacted the first "Good Samaritan" statute[3] in the country for physicians who render "emergency care at the scene of an emergency." The Legislature subsequently has enacted numerous other Good Samaritan statutes that

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[1] Health & Safety Code section 1799.102 provides: "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered."

[2] Unless noted otherwise, all statutory references shall be to the Health & Safety Code.

[3] When enacted, Business & Professions Code section 2144 (renumbered 2395) provided that "[n]o person licensed under this chapter, who in good faith renders emergency care at the scene of the emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care."

advance this State's public policy: encourage citizens to render aid to others in emergencies.[4]

The Court of Appeal's opinion, though, restricts the immunity offered by Section 1799.102 significantly and rashly. It rewrites the statute by adding the word "medical" in two places. The Court of Appeal essentially construes Section 1799.102 to apply only to people with certain training, i.e., people who can render "*medical* care" at the scene of a "*medical* emergency." This interpretation ignores the statute's plain language, the legislative history that demonstrates Section 1799.102 covers preparatory acts leading to medical care in emergencies, as well as medical care itself, and this State's long history and public policy of supporting Good Samaritans.

Moreover, the Court of Appeal's opinion is logically flawed. It makes little sense to confer immunity on one who renders medical care, but not treat commensurately the even braver act of removing an accident victim from a dangerous situation to safety, so that the medical care may be rendered. For example, should the person who knows and provides CPR to an injured individual be granted immunity under Section 1799.102, while

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[4] The parable of the Good Samaritan is told in *Luke* 10:25-37. A man is robbed and beaten by thieves, and left injured on the side of the road. Two supposedly pious men -- a priest and a Levite -- see the man, but pass him without offering aid. A man from Samaria sees the injured man and has compassion. The Samaritan tends the injured man's wounds, then takes the injured man to an inn and pays the innkeeper to care for him.

the person who risks his or her life to carry a patently injured individual from a burning car be open to liability? Surely, the Legislature did not intend to make such a distinction.

## III. STATEMENT OF THE CASE

### A. FACTUAL BACKGROUND

On Friday, October 31, 2003, Ms. Torti visited a nightclub in the Woodland Hills area with several friends and co-workers, including plaintiff and respondent Alexandra Van Horn, and defendant and appellant Anthony Glen Watson. (Torti Decl., at p. 1:18-23 [Watson AA0152].)[5] At approximately 1:15 a.m. the group left the nightclub in two separate cars to drive back to Ms. Torti's home. (Torti Decl., at p. 1:24-26 [Watson AA0152]; Watson Depo., at p. 142:12-15 [Watson AA0292].) Mr. Watson drove Ms. Van Horn, who sat in the front passenger seat, and another individual, Jonelle Freed, who sat in the backseat. Ms. Torti rode behind in another car driven by a friend, Dion Ofoegbu. (Torti Decl., at p. 1:27-2:4 [Watson AA 0152-153].)

As Mr. Watson sped down a deserted Topanga Canyon Boulevard, he claimed that he saw an animal dart onto the road in front of his car. Mr. Watson swerved, lost control of the vehicle and crashed into a light

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[5] "Watson AA" refers to the Appellant's Appendix of Exhibits submitted by Mr. Watson to the Court of Appeal on July 20, 2006.

pole, which fell into a nearby building.[6] (Watson Depo., at pp. 157:7-159:20 [Van Horn AA000149-000151]; Van Horn AA000120.[7]) The force of the impact crumpled the front of the car and caused the air bags to deploy. (Torti Decl., at p. 2:16-18 [Watson AA0153]; Van Horn Depo., at p. 86:9-16 [Van Horn AA000091].) In the immediate aftermath of the accident, Ms. Van Horn was in severe pain from head to toe, barely able to breathe and was physically unable to exit the vehicle. (Van Horn Depo., at p. 86:15-19 [Van Horn AA000091]; 93:20-95:1 [Van Horn AA000098-000100].)

Moments later, Ms. Torti and Mr. Ofoegbu arrived at the scene. Ms. Torti saw smoke emanating from the car and an unidentifiable liquid dripping beneath it. (Torti Decl., at p. 2:24-27 [Watson AA0153].) She immediately became worried about the possibility of a fire or an explosion. When she approached the wrecked vehicle, Ms. Torti exclaimed "Alexandra, we got to get you out of the car, the car is going to blow up!" (Van Horn Depo., at p. 91:7-10 [Van Horn AA000096]; 93:4-15 [Van Horn AA000098].) Ms. Torti then moved Ms. Van Horn from the vehicle to the ground nearby. (Torti Depo., at p. 89:15-18 [Van Horn AA000432].)

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[6] Mr. Watson took a field sobriety test the night of the accident. His blood alcohol level did not register above the legal limit. (Watson AA0371.)

[7] "Van Horn AA" refers to the Appellant's Appendix in Lieu of Clerk's Transcript submitted by Ms. Van Horn to the Court of Appeal on December 6, 2005.

Moments later, Los Angeles City and County fire department personnel arrived on scene and immediately transported Ms. Van Horn to a hospital. (Van Horn Depo., at p. 103:6-10 [Van Horn AA000103].) She underwent emergency surgery for a lacerated liver, and had surgery for a fractured vertebrae. (Van Horn Depo., at pp. 111:11-112:11 [Van Horn AA000111-000112].) She is now permanently paralyzed. (Van Horn AA000005.)

Ms. Van Horn contends that Ms. Torti's actions either caused or exacerbated the injuries to her vertebrae and, consequently, caused her paralysis.

**B. PROCEDURAL HISTORY**

On May 25, 2004, Ms. Van Horn filed an action against Mr. Watson in the Los Angeles County Superior Court. On May 2, 2005, Ms. Van Horn amended the complaint to add Ms. Torti and Mr. Ofoegbu as defendants. The sole count alleged against Ms. Torti was for negligence. On June 3, 2005, Ms. Torti filed a cross-complaint for partial indemnity and declaratory relief against Mr. Watson and Mr. Ofoegbu. A few weeks later, on June 14, 2005, Mr. Watson filed a cross-complaint for indemnity and declaratory relief against Ms. Torti.

On June 14, 2005, Ms. Torti filed a motion for summary judgment on the grounds that Section 1799.102 shielded her actions from liability.

On October 17, 2005, the trial court, the Honorable Howard J. Schwab, presiding, heard oral argument. On November 15, 2005, the Superior Court entered summary judgment in favor of Ms. Torti, and found that, based on the undisputed evidence, she in good faith rendered emergency care at the scene of an emergency.

Both Ms. Van Horn and Mr. Watson appealed the Superior Court's judgment.[8] The appeals were consolidated. On March 21, 2007, the Court of Appeal filed its opinion. It reversed the grant of summary judgment on the grounds that Section 1799.102 only applies to those who render emergency *medical* care at the scene of a *medical* emergency. The Court of Appeal further found that Ms. Torti did not render emergency *medical* care as a matter of law (the Superior Court had made no finding on the issue). After Ms. Torti filed a timely Petition for Rehearing, on April 17, 2007, the Court of Appeal modified its opinion in part, but denied the Petition and did not change its ultimate opinion.

Ms. Torti timely filed a Petition for Review on April 30, 2007. This Court granted review on June 13, 2007.

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[8] For purposes of appeal, Ms. Torti and Mr. Watson stipulated to judgment in Ms. Torti's favor on their respective cross-complaints, and the Superior Court entered judgment on November 29, 2005.

## IV. DISCUSSION

### A. The Legislature Purposely Abrogated the Common Law Negligence Regime By Enacting Good Samaritan Statutes.

At common law, there is no duty to help another in peril. (See, e.g., *Williams v. State of California* (1983) 34 Cal.3d 18, 23 [664 P.2d 137, 192 Cal.Rptr. 233] (citing Rest.2d Torts, § 314; 4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 554, p. 2821).) If, however, one chooses to help a stranger in peril, the rescuer is potentially liable for any injuries suffered by the stranger. (*See id.*) An oft-repeated hypothetical used by commentators to illustrate the absurdity of these principles involves a man sitting on a pier idly watching a stranger who, unable to swim, helplessly splashes in the water. The man on the pier can swim and would not harm himself in any way by rescuing the struggling stranger. Yet, the man on the pier does nothing, and the stranger eventually drowns.[9] (See, e.g., Prosser & Keeton, Torts (5th ed. 1984) § 56, p. 375 ("Torts").)

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[9] This hypothetical is an amalgamation of two actual decisions: *Osterlind v. Hill* (Mass. 1928) 160 N.E. 301 (the defendant's failure to respond to the decedent's calls for help while hanging onto a capsized canoe for over a half-hour period was "immaterial" because the defendant had no duty to help, even though the defendant had rented the decedent the canoe); and *Yania v. Bigan* (Pa. 1959) 155 A.2d 343 (the defendant urged the decedent to jump into shallow water, but then made no attempt to rescue the defendant; no liability because "[t]he mere fact that Bigan saw Yania in a position of peril in the water imposed upon him no legal, although a moral, obligation or duty to go to his rescue unless Bigan was legally responsible, in whole or in part, for placing Yania in the perilous position").

At common law, the man on the pier has no duty to help the victim and, consequently, cannot be held liable for the resulting death. Alternatively, if the man on the pier chooses to act, the law imposes on him a duty of reasonable care and potentially holds him liable for any injuries sustained by the drowning victim as a result of the rescue. It has been recognized that these common law principles actually discourage people from acting to help others at all. (Prosser & Keeton, Torts, *supra*, § 56 at p. 378 ["It has been pointed out often enough that this in fact operates as a real, and serious, deterrent to the giving of needed aid"].) Likewise, the fact that people were discouraged from acting is not surprising – an accident victim by definition either has suffered or imminently may suffer physical harm, so the grist for personal injury litigation already exists when the Good Samaritan first arrives on the scene.

While idly watching another human drown is morally abhorrent, the legal maxim that there will be no legal consequences arises from an early common law distinction between two negligence concepts -- misfeasance, i.e., active misconduct that results in injury to another, and nonfeasance, i.e., "passive inaction." (*Id.* at p. 373.) Early common law imposed

liability for any misfeasance -- sometimes to the point of absurdity.[10] Yet courts refused to force people to take action to help others:

> The highly individualistic philosophy of the older common law had no great difficulty in working out restraints upon the commission of affirmative acts of harm, but shrank from converting the courts into an agency for forcing men to help one another. (*Id.*)

Stated differently, early common law courts recognized a bright-line distinction between a person's *legal* duty to rescue and a person's *moral* duty to help another in peril. Courts unfailingly refused to enforce the moral duty or to protect those who chose to act upon it. (*Id.* See also Charles O. Gregory, *The Good Samaritan and the Bad: The Anglo-American Law* in The Good Samaritan and the Law (James M. Ratcliff ed., 1966) p. 23 ("Good Samaritan") ["Our common law has always refused to transmute moral duties into legal duties"].)[11]

Against this common law negligence backdrop, it is unsurprising that physicians across the United States were unwilling to help strangers during emergencies for fear of facing malpractice suits. "The limited protection afforded to physicians by the common law did not sufficiently

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[10] See generally, James Barr Ames, *Law and Morals* in Good Samaritan, *supra*, at p. 1 (Twelfth Century jurisprudence imposed liability on actors who negligently harmed another, even while acting in self-defense).

[11] Early common law courts eventually imposed liability for nonfeasance in limited situations, e.g., where the plaintiff and the defendant are in a special relationship. See Prosser & Keeton, Torts, *supra*, § 56, at p. 375.

allay their fears of legal action, and thus the common law worked as a serious deterrent to the rendition of needed medical aid in emergency situations." (*Colby v. Schwartz* (1978) 78 Cal.App.3d 885, 890.)

To alleviate this "serious deterrent," states began enacting Good Samaritan statutes. They essentially altered common law negligence principles by conferring statutory immunity on those individuals who fulfilled their moral duty. In 1959, California became the first state to enact such a statute. (*Id.*; Brandt, *Good Samaritan Laws - The Legal Placebo: A Current Analysis* (1983-1984) 17 Akron L.Rev. 303, 305.)

While there is no recorded legislative history regarding this seminal statute, several sources point to an accident in the Lake Tahoe area as the apparent impetus for the statute. A woman skiing fell and broke her leg. Although there were several doctors on the same ski slope who could have rendered emergency care, the woman "lay moaning in the snow for a long time" before she received treatment, because none of the doctors would provide emergency care. (Kearney, *Why Doctors Are "Bad" Samaritans* (May 1963) Reader's Digest, at p. 89.) In response, Assemblyman Rumford sponsored what became Business and Professions Code section 2144 with the assistance of the California Medical Association. (*Id.*)

When enacted, Business & Professions Code section 2144 (now codified at Business & Professions Code section 2395) provided that "[n]o

person licensed under this chapter, who in good faith renders emergency care at the scene of the emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care."[12] This statute did not apply to a physician's normal course of duties in a hospital or other medical facility, but rather to emergency care he or she might render outside the scope and course of normal employment:

> It would seem unwise and unlikely that California's doctor statute would extend to anything within the confines of a hospital. The apparent purpose of Good Samaritan legislation is to encourage doctors and nurses to volunteer emergency care at the scene of an accident.

(Request for Judicial Notice in Support of Opening Brief on the Merits ("RJN"), Ex. C, at p. 3.)

Thus, Business & Professions Code section 2144 did not limit its grant of immunity to "medical" care at the scene of a "medical" emergency, but rather envisioned a broad scope of situations that a doctor might face *outside* the emergency room. It is not a stretch to imagine a doctor removing an injured person from a car in order to render CPR or other first-aid.

Business & Professions Code section 2144 became the model for other Good Samaritan statutes in California, including Section 1799.102,

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[12] A "person licensed under this chapter" was and is a physician. (Bus. & Prof. Code, §§ 2040 & 2041.)

which cover various types of people in manifold situations. Since 1959, the Legislature consistently has broadened the grant of immunity, and not limited it. This long history of Good Samaritan legislation reflects the clear public policy choice of encouraging citizens to fulfill their moral duty to help one another. (*Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278, 298 [763 P.2d 948, 253 Cal.Rptr.97] ["[E]xtending liability to voluntary, noncommercial and noncustodial relationships is contrary to the trend in the Legislature to encourage private assistance efforts. This public policy goal is expressed in the acts of the Legislature abrogating the 'Good Samaritan' rule. Statutes barring the imposition of ordinary negligence liability on one who aids another now embrace numerous scenarios"].)

By its interpretation of Section 1799.102, the Court of Appeal nevertheless ignored this history and skirted this State's well-established public policy of encouraging Good Samaritans.

### B. The Court Of Appeal Disregards The Statute's Plain Meaning And The Underlying Public Policy.

#### 1. General Principles Of Statutory Interpretation.

The principles of statutory interpretation are well-established. The ultimate goal of any statutory interpretation is to determine the Legislature's intent for enacting the statute, i.e., its purpose. (*People v. Johnson* (2006) 38 Cal.4th 717, 723-724 [133 P.3d 1044, 42 Cal.Rptr.3d

887.) The Legislature's intent is ascertained from the words of the statute. (*Bernard v. Foley* (2006) 39 Cal.4th 794, 804 [139 P.3d 1196, 47 Cal.Rptr.3d 248] [the text of a statute "generally provide[s] the most reliable indicator of legislative intent"].)

In construing a statute's words, the language "must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1135 [156 P.3d 328, 57 Cal.Rptr.3d 306].) The court must avoid an interpretation that renders related statutes void. (*Id.*) Moreover, courts are not authorized "to insert what has been omitted, or to omit what has been inserted." (*Id.* See also *McAlexander v. Siskiyou Joint Community College* (1990) 222 Cal.App.3d 768, 775 [272 Cal.Rptr. 70] [a court "may not speculate that the legislature meant something other than what it said. Nor may they rewrite a statute to express an intention not expressed therein"].) Lastly, a court may construe legislative intent from the Legislature's omission of a particular subject from a provision that is included in another statute concerning a related matter. (*See id.* at p. 776 ["Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted"].)

If the text is clear and unambiguous, then the court's inquiry must end there. (*Johnson*, *supra*, 38 Cal.4th at p. 724.) However, if the text supports multiple interpretations, the court may then review "extrinsic sources, including but not limited to the legislative history and administrative interpretations of the language." (*Microsoft Corp. v. Franchise Tax Board* (2006) 39 Cal.4th 750, 758 [139 P.3d 1169, 47 Cal.Rptr.3d 216].)

### 2. The Court of Appeal Ignored the Plain Language of Section 1799.102.

Section 1799.102 provides as follows:

> No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.

The language of Section 1799.102 could not be plainer. The statute applies to any "person who in good faith, and not for compensation, renders emergency care at the scene of an emergency ...." The word "medical" does not appear. Likewise, the statute's literal effect is not pernicious either on its face generally or as applied.

While other provisions in the Act[13] specifically list who they apply to and the subset of emergency actions they cover, Section 1799.102 operates as a catch-all provision for those persons, i.e., ordinary citizens, who are not designated medical professionals specified in other Good Samaritan statutes. It is not surprising, then, that Section 1799.102 is not qualified similar to certain other Good Samaritan statutes. The Legislature plainly intended that it apply as broadly as several other Good Samaritan statutes, and more broadly than various other statutes within the Act.

Rather than accept the plain language of Section 1799.102 that expresses the Legislature's intent, though, the Court of Appeal jumped to other, selected provisions under the Act supposedly to decipher the meaning of Section 1799.102. The Court of Appeal listed three reasons why it read the word "medical" into Section 1799.102 in two separate places. None of these reasons, however, is an even arguably sufficient basis for rewriting the statute.

First, the Court of Appeal pointed to the Act's definitional section, Section 1797.70, which defines "emergency" as "a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." That definition, though, simply focuses upon the

[13] Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, Health & Saf. Code, §§ 1797, et seq.

person needing assistance, and there was no doubt but that Ms . Van Horn needed immediate medical attention as she sat in agony, havin g difficulty breathing and unable to exit the crumpled car on her own. Thi s definition, then, is no reason to reinterpret the statute.

Second, the Court of Appeal noted that Section 1799.1O2 is located in the Health & Safety Code and a "general immunity statute would more likely be found in the Civil Code ...." As noted above, however, the seminal Good Samaritan statute lies in the Business & Profess ions Code. (Bus. & Prof. Code, § 2144 [renumbered § 2395].) Code-specific location, then, proves nothing in this context.

Third, the Court of Appeal looked at the Act's general intent, which is to encourage and train others to assist at the scene of a medical emergency. This point, however, misses the obvious: people injured in accidents, or caught in natural or man-made catastrophes may need to be rescued and/or transported, as well as receive medical care. Not surprising, certain of the Act's Good Samaritan statutes expressly apply to "rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person ..." and not only emergency medical care. (See § 1799.107, subd. (e).) Thus, the term "emergency care" has been used by the Legislature to encompass a broad range of activities, and not just medical care, as the Court of Appeal presupposes. In short, these

points are not reason to rewrite Section 1799.102 in a manner contrary to public policy.

Indeed, if the Legislature had intended for Section 1799.102 to cover only medical care in medical emergencies, it would have included the word "medical" in the statute, just as it did in other immunity statutes within the Act. There are any number of Good Samaritan statutes that expressly refer to "medical care," "emergency medical care" and/or "medical emergency." (See, e.g., § 1799.100 (granting immunity to local agencies and organizations who "train people in emergency medical services"); § 1799.106 (granting qualified immunity to firefighters, police officers and emergency medical technicians who render "emergency medical services at the scene of an emergency").)

In contrast to statutes such as Sections 1799.100 and 1799.106, Section 1799.102 does not limit the type of emergency care that is rendered, or the type of emergency that must exist. Section 1799.102 is not unique in this regard. Other Good Samaritan statutes within the Act similarly speak broadly to "emergency care" and an "emergency," and are not qualified by the word "medical." (§ 1799.104 (granting qualified immunity to physicians, nurses and EMTs who give or follow "emergency instructions ... at the scene of an emergency").)

Ultimately, then, the Court of Appeal's interpretation of Section 1799.102 does not "harmonize" with the Act. Rather, it subverts any cohesive reading of the Act as a whole.

### 3. The Court of Appeal's Interpretation of Section 1799.102 Does Not Harmonize With Other Related Good Samaritan Statutes Under The Act.

#### a) The Court Of Appeal's Decision Undoes The Firefighters' Good Samaritan Statute.

As discussed above, the Court of Appeal's analysis relies in particular on two, "related" statutes (§§ 1797.5 & 1797.70). If, however, the analysis were extended to additional, related Good Samaritan statutes -- as it should be -- some of the unintended and unwanted consequences of the Court of Appeal interpretation become apparent.

For example, Section 1799.107 provides qualified immunity to firefighters when engaged in non-firefighting activities. It was added by the Legislature in 1984, and thus six years after the Act and Section 1799.102 were enacted. The Court of Appeal's decision here not only eviscerates this firefighters' Good Samaritan statute, but it flatly contradicts the express legislative intent in enacting Section 1799.107.

Like Section 1799.102, Section 1799.107 uses the word "emergency" unqualified by the word "medical." The latter statute provides in pertinent part:

> (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.
>
> (b) ... [N]either a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.
>
> * * *
>
> (e) For purposes of this section, "emergency services" includes, but is not limited to, first aid and medical services, *rescue procedures and transportation*, or *other related activities necessary to insure the* health or *safety of a person* in imminent peril. [Emphasis added.]

Ironically, the Legislature adopted Section 1799.107 in direct response to another Court of Appeal opinion, *Lewis v. Mendocino Fire Protection District* (1983) 142 Cal.App.3d 345 [190 Cal.Rptr. 883], which narrowly interpreted a Good Samaritan statute codified in the Government Code. In *Lewis*, a camper at a state park was pinned under a large tree that had toppled over onto his tent. The camper was rescued by the local fire department, which the camper subsequently sued for his injuries. The First District ultimately held "that Government Code Section 850.4 does not

grant immunity to a fire district when its personnel negligently injure a person rescued during a non-firefighting incident." (*Id.* at p. 346.)

In reaction to *Lewis*, the Legislature enacted SB 1120. The Senate Committee on Judiciary described what eventually was codified as Section 1799.107 as follows:

> KEY ISSUE
>
> SHOULD EMERGENCY RESCUE PERSONNEL BE IMMUNE FROM LIABILITY FOR NEGLIGENT ACTS WHILE PROVIDING EMERGENCY SERVICES?
>
> PURPOSE
>
> Existing law provides fireman [sic] with complete immunity while fighting fires, but a recent appellate court decision has held that the immunity does not extend to rescue operations.
>
> This bill would provide immunity for negligent acts committed by emergency rescue personnel, as defined, while providing emergency services including rescue operations.
>
> The purpose of the bill is to encourage fire departments to continue to provide rescue services.

(*See* Request for Judicial Notice in Support of Petition for Review, Ex. C.)[14]

As enacted, Section 1799.107 grants immunity to firefighters for injuries caused while providing "emergency services." Section 1799.107(e)

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[14] This Court granted Ms. Torti's Request for Judicial Notice in Support of Petition for Review on June 13, 2007.

defines "emergency services" to include, among other things, "first aid and medical services, *rescue procedures and transportation, or other related activities necessary to insure the* health or *safety of a person* in imminent peril" (emphasis added). And as noted above, the Legislature passed Section 1799.107 six years after the Good Samaritan statute (Section 1799.102) at issue here. The Legislature presumably understood and intended its broad definition of "emergency services" in 1984, i.e., it is not limited to emergency medical services.

Under the Court of Appeal construction below, though, "emergency services" can only mean "emergency medical services." So going forward, is the firefighters' Good Samaritan statute, Section 1799.107, now limited to "emergency medical services?" Will the local Mendocino fire department be at risk if called upon to rescue Mr. Lewis once again from underneath a tree? Or, alternatively, will the meaning of "emergency" now vary depending on which Good Samaritan statute in the Act happens to be at issue in a given situation?

**b) The Court Of Appeal's Interpretation Halves The Ambulance/EMT Good Samaritan Statute.**

The Court of Appeal's opinion suggests that it looked beyond Section 1799.102's plain meaning to promote a general statutory purpose and to "avoid an interpretation that would lead to absurd consequences." In

point of fact, limiting immunity only to those who render emergency medical care at the scene of a medical emergency causes nothing but unwanted "consequences."

For instance, assume that Ms. Torti moved Ms. Van Horn from the car in order for another individual to render CPR. Under the Court of Appeal's interpretation, Ms. Torti would not be entitled to immunity under Section 1799.102 because she did not render emergency medical care, but the person who rendered the CPR is entitled to immunity. This illogical distinction between people responding to the same emergency should not be allowed to stand.

Just such an unintended consequence, however, becomes evident by applying the Court of Appeal's interpretation to another immunity-related statute in the Act. Section 1799.108 provides qualified immunity for ambulance drivers, attendants and EMTs (emergency medical technicians). These individuals may work for government agencies (fire departments, etc.) or be employed by private enterprises such as ambulance services. While public agency EMTs enjoy civil immunities codified elsewhere, (see Health & Saf. Code, §§ 1799.106-1799.107; Gov. Code, §§ 820 et seq.), private sector ambulance personnel and EMTs must rely on Section 1799.108's qualified immunity.

An EMT's defined scope of practice includes extricating entrapped persons. (Cal. Code Regs., tit. 22, § 100063.) Section 1799.108 uses the same "at the scene of an emergency" language as in Section 1799.102, and expressly adopts the latter statute for definitional purposes. Given the Court of Appeal's interpretation of "emergency," will private sector EMTs only enjoy immunity while performing emergency medical care at the scene of a medical emergency? Will they have no immunity while attempting to extricate accident victims from cars and buildings? If so, then these EMTs will be exposed to liability while performing a subset of their authorized duties. Surely, the Legislature did not intend for the Act to be construed in a manner that immunizes trained emergency response professionals from liability for undertaking some of their authorized duties, but not for others.

### C. The Court Of Appeal's Interpretation Disregards The Legislative History Of Section 1799.102.

#### 1. AB 1301 Was Introduced To Encourage Citizens To Help Others.

Assembly Bill 1301 was introduced in 1977, and apparently was inspired by a program based in Seattle, Washington called "Heart Watch" that encouraged citizens to take CPR and other first aid training. After Seattle implemented this program, the survival rate for heart attack victims in the city rose approximately ten percent (10%). (RJN, Ex. D, at p. 2.)

The Legislature admired the success of the Seattle program, but recognized that any such program in California would fail without civil immunity provisions. (*Id.*)

According to the Assembly Committee on Health, AB 1301 was drafted with the express intent to encourage citizens to assist others in emergencies:

> SUMMARY:
>
> 1. Establishes as state policy the encouragement of citizens to assist one another at the scene of a medical emergency.
>
> 2. Requires the Department of Health to promote programs for training citizens in [CPR] and first aid. Local programs for training citizens would be immune from civil liability for damages resulting from the training programs.
>
> * * *
>
> BACKGROUND & COMMENTS:
>
> 1. The intent of AB 1301 is to promote citizen involvement in providing emergency assistance to other citizens and to encourage cities and counties to sponsor such programs and operate paramedic programs by protecting them from potential lawsuits.
>
> * * *

(*Id.*)

AB 1301 became law on May 11, 1978.[15] There is no indication in the legislative history of AB 1301 that the Legislature contemplated that medical care alone was encompassed within the immunity provisions. Indeed, subsequent attempts to amend Section 1799.102 demonstrate that the Legislature likely always believed Section 1799.102 immunity extended to "assistance" during an emergency, as well as medical care itself.

### 2. AB 1252 And AB 386 Were Introduced To "Clarify" That Section 1799.102 Covers A Broad Range of "Emergency Care."

As she did below, Ms. Van Horn may argue that certain Good Samaritan legislation that was introduced, but never passed, somehow supports the rewriting of Section 1799.102 now. Unenacted legislation, however, is not terribly persuasive. (*Dyna-Med, Inc. v. Fair Employment and Housing Comm.* (1987) 43 Cal.3d 1379, 1396 [743 P.2d 1323, 241 Cal.Rptr. 67]). And in any event, the history of this particular unenacted legislation shows that the statute as presently written is not limited to "emergency *medical* care."

In 1991, the City of Los Angeles sponsored AB 1252 to clarify that the definition of "emergency" and "emergency care" in Section 1799.102 includes "assistance or advice." (RJN, Ex. G, at p. 2.) This bill arose out

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[15] Section 1799.102 originally was enacted as Section 1767. (*See* RJN, Ex. A.) In 1980, the Legislature passed the Act, which replaced several Health & Safety Code sections, including Section 1767 that was renumbered as 1799.102 and amended to the current language.

of an incident in Los Angeles that parallels the facts here. A private citizen and an off-duty police officer rushed to help the passengers in an overturned vehicle on the San Diego Freeway. The two Good Samaritans were able to pull a pregnant woman from the overturned car to safety. However, before they could reach the second passenger in the car, another vehicle struck the car and further injured the second passenger. The second passenger sued the Good Samaritans.

There was a huge public outcry in Los Angeles over the fact that the two men were being sued -- and could be sued -- for committing an act of sheer bravery and selflessness. The City of Los Angeles wanted to pay the defense costs of the layperson in the suit (since the off-duty police officer already would be defended by the police department), but concluded that it was not authorized under the law to pay these costs.

The Assembly Third Reading summarizes the reasons the City of Los Angeles sponsored the bill:

COMMENTS

* * *

The City has sponsored AB 1252 to address the following issues:

a) It is not clear that the heroic actions of the Good Samaritans are included in the existing immunity. Specifically, does the term "emergency care" include the kind of simple, non-medical assistance provided by the two Good Samaritans . . .?

> AB 1252 *clarifies* this issue by specifying that "assistance and advice" provided in response to an emergency is, in fact, "emergency care" within the meaning of Section 1799.102.
>
> * * *

(*Id.*) (emphasis added). Thus, the Legislature did not view AB 1252 as an attempt to re-write or change the intent of Section 1799.102, but rather viewed it as a clarification of law that already was widely known. The bill was passed by the Assembly, but died in the Senate in 1992, with strong opposition from the California Tort Lawyers Association ("CTLA").

One year later, Assemblywoman Boland, the author of AB 1252, introduced AB 386 to once more attempt to clarify the definition of "emergency care" in Section 1799.102. The Assembly Committee on Judiciary stated the drafter's intent:

> COMMENTS
>
> 1) Author's Statement. . . . [The author] argues that this bill merely clarifies existing law. Moreover, the author suggests that it is anomalous to argue that action preparatory to the provision of "care" is not immunized, while the provision of actual "care" is immunized.
>
> As a matter of policy, the author argues we should encourage selfless and courageous acts . . .. It is unreasonable to expect common citizens to make split second, life-and-death decisions based on hoary doctrines of law.

(RJN, Ex. J, at p. 2.)

The CTLA, while opposed to enactment of AB 386, agreed that adding the word "assistance" to Section 1799.102 was not a threat to the intent of the original statute. (*Id.* at p. 3.) Indeed, the CTLA and the Assembly Committee on Judiciary both suggested that the Legislature add language to Section 1799.102 "stating that the amendment is declaratory of existing law." (*Id.*) Thus, these materials show that the actions by the Good Samaritans in Los Angeles -- and, hence, Ms. Torti's actions here – fall within Section 1799.102 as "emergency care." On those grounds, the bill passed the Assembly and headed to the Senate with two major issues:

> As passed by the Assembly, this bill:
>
> 1) Would clarify that the current immunity applies to the provision of "assistance" at the scene of an emergency.
>
> 2) Stated that the amendment is declaratory of existing law.

(RJN, Ex. K, at p. 1.) The Senate, however, gutted the bill, deleted the provisions that had passed the Assembly, and drafted new provisions relating to an entirely different subject.

Despite failing to pass the full Legislature, if anything these two bills are premised on the notion that "emergency care" under Section 1799.102 is not limited to "medical care," but includes a broad range of actions. As Assemblywoman Boland recognized in 1993, any other interpretation is counterintuitive to the fundamental purpose of Section 1799.102.

### D. The Court Of Appeal's Interpretation Creates Unworkable Distinctions For Ordinary People.

While the Court of Appeal acknowledges that "any person (whether trained or not)" is granted immunity under the statute, its constrained interpretation will have a significant adverse, if not catastrophic, impact on the ordinary heroes we hear about, read about or know. In essence, the Court of Appeal instructs that as a society we need to encourage doctors, nurses and other health care professionals to aid in medical emergencies on a volunteer basis, but that we should discourage ordinary people from assisting at the scene of a serious auto accident, or a large-scale natural or man-made disaster for that matter.

One practical (and unwanted) affect of the Court's construction may be to award immunity only to trained medical professionals. Under the Court of Appeal's opinion, only a person who attempts to render emergency medical care at the scene of a medical emergency is immune from liability. While a trained medical professional should be able to identify a medical emergency and render the appropriate emergency medical care, a layperson likely will not know where emergency medical care begins and ends. A layperson, therefore, may be discouraged from acting at all in an emergency situation, because of uncertain immunity based on a less-than-finite distinction between emergency care and emergency medical care.

Further, the Court of Appeal's holding has far-reaching effects beyond a one-victim, one-Good Samaritan scenario. In California, the State expects volunteers to respond in the aftermath of wide-spread disasters to help in the recovery and rescue of their fellow citizens. Indeed, the State has recognized that volunteers are "important assets" to any response to a major disaster. (Request for Judicial Notice in Support of Petition for Review, Ex. G [Governor's Office of Emergency Services' "Disaster Service Worker Volunteer Program (DSWVP) Guidance"], at p. 15.)

While the State affords limited immunities to volunteers registered with the Disaster Service Worker Volunteer Program (see Gov. Code, § 8657), unregistered volunteers -- known as "convergent" volunteers -- must rely on Good Samaritan statutes. (Id. ["Convergent volunteers not registered as DSW volunteers, have some liability protection for disaster service under Good Samaritan Laws. They are not, however, provided immunities to the extent as registered DSW volunteers and are not covered for workers' compensation insurance through the DSW Volunteer Program"].)

Under the Court of Appeal's interpretation, convergent volunteers, who rescue and transport victims during these disasters, would have no immunity. This "chilling effect" on the participation of convergent

volunteers in rescue and other relief efforts in the aftermath of a wide-spread disaster cannot possibly have been the Legislature's intent when adopting Section 1799.102.

## V. CONCLUSION

For almost fifty years, this State's public policy has been to encourage individuals to render aid to others in peril. This public policy was an express rejection of the common law that counseled one to walk past the injured man on the side of the road. We want to encourage people to render emergency assistance, and not create situations in which a citizen must "make split second, life-and-death decisions based on hoary doctrines of law." Ms. Torti respectfully requests that this Court affirm the Superior Court's grant of summary judgment on her behalf.

Respectfully submitted,

Dated: August 13, 2007

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## CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), counsel for respondent Lisa Torti hereby certify that this Opening Brief on the Merits consists of 6,813 words, as counted by the Microsoft Word 2002 word-processing program used to generate this brief.

Dated: August 13, 2007 SONNENSCHEIN NATH & ROSENTHAL LLP

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**Case No. S152360**
***Van Horn v. Watson and Torti***

## PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017.

On August 13, 2007, I served the within **OPENING BRIEF ON THE MERITS** on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box located at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2007, at Los Angeles, California.

Audrey Rosenbaum